<u>IN THE UNITED STATES</u>
<u>PATENT AND TRADEMARK OFFICE</u>

APPLICATION FOR LETTERS PATENT

OF:

JACK WASSERMAN

FOR:

<u>METHOD AND SYSTEM FOR OBTAINING AND FINANCING EXCLUSIVE REAL ESTATE LISTINGS</u>

STROOCK & STROOCK &
LAVAN, LLP
180 Maiden Lane
New York, NY 10038
Tel: 212-806-5400
Docket No: 672988/0002

EXPRESS MAIL LABEL NO.: EV 086 092 681 US

METHOD AND SYSTEM FOR OBTAINING AND FINANCING EXCLUSIVE REAL ESTATE LISTINGS

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates generally to real estate transactions and, more specifically, to methods and systems for real estate agents to obtain and/or finance exclusive real estate listings.

2. Description of Related Art

In the current residential real estate industry, real estate companies offer home owners essentially two options to sell their properties: either an exclusive listing of the property or a non-exclusive listing. An exclusive contract, or listing, involves a contractual arrangement between the real estate company and seller pursuant to which the company has the exclusive right to sell the property for a specified duration of time, typically a number of months. A non-exclusive arrangement, on the other hand, permits the seller to hire other real estate companies to sell the property. In return for listing the property, the real estate company, and the agents working for them, obtain a commission, usually a percentage of the selling price of the property.

The real estate company much prefers an exclusive listing. With an exclusive listing, the real estate company is more likely to recoup its investment in advertising, or listing, the property. However, there is a tension between the real estate company's goal of obtaining an exclusive listing and the seller's desire. Sellers frequently believe that an exclusive listing is disadvantageous: with only one company advertising and showing the property, fewer potential buyers view the property. With fewer buyers, selling the

property is less likely and, if the property is sold, the lack of competition is likely to result in a lower selling price.

Accordingly, there exists a need for an improved method for listing real estate properties and, more specifically, for exclusive listings.

SUMMARY OF THE INVENTION

The present invention satisfies the foregoing, as well as other, needs. A method of obtaining a seller's exclusive real estate listing for a property according to one embodiment includes a real estate agent providing consideration to the seller, for example, in the form of an up-front payment, and receiving from the seller the exclusive real estate listing of the property, the exclusive real estate listing being for an exclusivity time period. If a sale condition, such as receipt of a bona fide purchase offer or a contract for sale, is met during the exclusivity time period, the real estate agent will receive return consideration, such as a refund of at least a portion of the consideration.

BRIEF DESCRIPTION OF THE DRAWINGS

Figure 1 is a schematic illustrating the method according to one embodiment of the present invention.

DETAILED DESCRIPTION OF CERTAIN EMBODIMENTS

Certain embodiments of the present invention will now be described with reference to the foregoing figure. As an initial matter, although the embodiments disclosed herein are described in the context of residential real estate, it is to be understood that the present invention is applicable to all types of real estate, including, for example, commercial real estate, land, single family homes, condominiums, cooperatives, rental properties, and the like.

In general, the present embodiment provides for a contractual arrangement between the seller (or seller's agent) and real estate agent (which is meant to encompass companies and other real estate entities), pursuant to which the seller grants the agent an exclusive for the seller's property, as well as a contractual arrangement between the agent and a financing agent, pursuant to which the agent finances its arrangement with the seller.

More specifically, the seller and real estate agent enter a contract (referred to herein as a "seller's contract") pursuant to which the seller grants the agent an exclusive right to sell and otherwise list the seller's property. Such exclusivity preferably is for a fixed amount of time, for example, between six and eighteen months, although the exclusivity time period may be longer, for example, until a sale condition (as described below) is satisfied. In return, the real estate agent gives the seller consideration for the grant of exclusivity, thereby providing the seller with an incentive to grant the real estate agent the exclusive listing. In the present embodiment, the consideration is in the form of an up-front payment, although other consideration may be used, such as one or more payments over time, goods, services, and other types of consideration.

The contract further provides that the seller may keep the payment if the agent fails to sell the property and must provide the real estate agent with return consideration if the agent sells the property. It is to be understood that the contract may define any other sale condition as triggering the return consideration, including, for example, the seller receiving a bona fide offer, the seller being under contract to sell the property, and the like. Furthermore, the occurrence of a sale condition may occur during the exclusivity time period or after the period, for example, where, after the exclusivity time

period expires, a bona fide offer is received from, or a contract for sale is entered with, a buyer that the real estate agent originally introduced to the seller/property during the exclusivity time period. In the event the property is sold during the term of exclusivity specified in the contract, the seller refunds the payment. Thus, in the present embodiment, at least a portion of the consideration provided to the seller is a payment contingent upon the failure to satisfy the sale condition for the property.

The return consideration may take any number of forms, including, for example, the seller providing the real estate agent a full or partial refund of the consideration given to the seller. Rather than returning the payment (or other consideration), the real estate agent may simply include terms in the seller's contract providing for an accounting at closing of the sale, whereby the purchase price is offset with the amount to be refunded. The contract may provide for all or a portion of the up-front payment to the seller to be held in escrow to ensure all or a portion is available to be refunded. In certain embodiments, the consideration to the seller is an advance of a portion of the listing, market or anticipated sale price of the property; if the sale condition is not satisfied, the seller retains the advance. In still other embodiments, in the event the real estate agent satisfies the sale condition, the return consideration takes the form of an increased commission.

It should be understood that in certain embodiments the seller does not return (or have offset) the entire amount received from the real estate agent. For example, in certain embodiments, as an added incentive to provide the exclusive listing, the seller is able to retain a portion of the consideration.

As will be appreciated by those skilled in the art, the real estate agent recognizes a benefit not only from executing seller's contracts, but also from being able to offer seller's contracts as an alternative to traditional listing contracts with sellers. For example, because the seller's contract provides the seller with the potential of receiving the consideration, the real estate agent is justified in charging a higher commission in connection with the seller's contract, as compared to traditional exclusive listing contracts offered by the real estate agent. Conversely, if potential seller's believe the commission associated with the seller's contract is to high, the real estate agent can offer the lower commission, standard contract.

In the present embodiment, the real estate agent also enters into a contract with a financing agent (referred to herein as a "financing contract"). The financing agent may be a wholly separate agent or may be related to the real estate agent. Pursuant to the financing contract, the financing agent provides the real estate agent with a loan, in the form of an up-front payment, in return for a series of payments over time. In general, the financing contract is a mechanism by which the real estate agent finances payments to the seller under the seller's contract. As will be appreciated by those skilled in the art, each contract between the real estate agent and a financing agent may cover one or more seller's contracts.

Practically, the real estate agent receives a loan from the financing agent in an amount sufficient to make payment on its outstanding or anticipated seller's contracts. The risk assumed by the financing agent depends, in part, on the likelihood the real estate agent selling the property that is subject to the seller's contract and, based on the sale, receiving a return of the up-front payment to the seller and its negotiated sales

commission. Other risk factors include the general condition of the real estate market, the financial strength of the real estate agent, and the like. The payments made by the real estate agent over time may equal a return of the principal plus an agreed to interest amount reflective of the risk assumed by the financing agent, for example 1-2% of the amount of the up-front payment.

The financing contract of the present embodiment further provides for a date upon which the financing loan becomes due. Such date may be relative to the date on which the periods of exclusivity under the real estate agent's contracts with one or more sellers expire, may be based on certain calendar dates, such as quarterly, bi-annually, annually, or any other negotiated date. Any portion of the loan payments due to the financing agent may be payable at the due date, as reflected in the financing contract.

In other embodiments, the payments from the real estate agent may equal a percentage of the real estate agent's anticipated commissions from the sale of properties covered by one or more seller's contracts. In return for an up-front financing payment, the financing agent has a contractual right to a portion of the future cash flow of the real estate agent. As such, the financing agent assumes a role similar to that of a factor.

The financing agent may simply collect its portion of these future payments, or it may issue derivative securities based on these future payments. Such derivatives may be segregated into any of a number of pools or traunches, for example, by date of expiration of the underlying seller's contracts, geographic market of the properties being sold, market value of properties being sold, type of property being sold, particular real estate agent, the interest rate charged by the financing agent and the like.

It should be understood that although the primary embodiment has been described in the context of a single seller and real estate agent, it is equally applicable to the agent contracting with multiple potential sellers. Similarly, although a single financing agent is described as contracting with one real estate agent, the present embodiment is applicable to one or more financing agents contracting with one or more real estate companies. Indeed, it is anticipated that a single financing agent will contract with multiple real estate companies, thereby diversifying its risk. Also, there is no requirement that a real estate agent use a financing agent or otherwise obtain financing.

It should be understood that the present embodiment can be implemented in large part by a computer system. For example, the real estate agent may utilize a specially programmed computer to track seller's and financing contracts, as well as its performance in selling properties by the termination of their respective exclusivity periods. One such computer implementation includes a programmed personal computer or server having associated electronic storage. The electronic storage includes a database for storing the details of the seller's and financing contracts. More specifically, the database includes one or more tables and fields for: identifying each seller's contract and, for each such contract, specifying the seller, seller's property, period of exclusivity and termination of such period, amount of the payment to the seller, negotiated commission, and any other parameters of the contract deemed relevant; and identifying each financing contract and, for each such contract, specifying the financing agent, the amount received, the payments owed and any other parameters deemed relevant. Where a financing contract relates to one or more specific seller's contracts, the database also indicates such relationships.

A program running on the computer provides certain functionality. For example, the program provides an information entry screen through which employees enter contract information. The program also causes the computer to run various reports, including summaries of payments due, exclusivity expiration dates, exclusivity expiration dates for properties not yet sold, sales made, commissions earned, commissions collected, and any other reports deemed relevant. The program may also include a payment system for automatically generating checks payable to one or more financing agents.

The financing agent may also implement certain functionality in a similar computer system, for example, to track its financing contracts with one or more real estate companies and the underlying seller's contracts.

Those skilled in the art will recognize that the method and system of the present invention has many applications, may be implemented in many manners and, as such, is not to be limited by the foregoing exemplary embodiments and examples. In this regard, any number of the features of the different embodiments described herein may be combined into one single embodiment. Moreover, the scope of the present invention covers conventionally known and future developed variations and modifications to the system components described herein, as would be understood by those skilled in the art.